

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Docket No. 14364US11)

In the Application of:

Joseph J. Kubler, et al.

Serial No.: 10/706,425

Filed: November 12, 2003

For: HIERARCHICAL DATA
COLLECTION NETWORK
SUPPORTING PACKETIZED
VOICE COMMUNICATIONS
AMONG WIRELESS
TERMINALS AND
TELEPHONES

Electronically filed on
April 29, 2009.

Examiner: ZHU, BO HUI ALVIN

Art Unit: 2419

Conf. No.: 8617

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir or Madam:

The Applicants request review of the final rejection in the above-identified application (the "Application"), as set forth in the final Office Action mailed on January 29, 2009 (hereinafter, "Final OA"). The Final OA states that Applicant's arguments filed November 5, 2008 (hereinafter "November Response") in response to the Office action mailed on August 6, 2008 (hereinafter "August OA") are not persuasive. No amendments are being filed with this request. This request is being filed with a Notice of Appeal.

REMARKS

The Application includes pending claims 22-70, all of which have been rejected. The Applicants respectfully submit that claims 22-70 define patentable subject matter.

Claims 22-70 were rejected under 35 U.S.C. §103(a) as being unpatentable over Meyerson et al. (US 5,579,487, hereinafter "Meyerson") in view of Morris et al. (US 4,884,132, hereinafter "Morris"), in further view of Gans et al. (US 5,610,617, hereinafter "Gans"). The Applicants respectfully traverse the rejections of the Final OA for at least the following reasons:

The Applicant respectfully submits that the proposed combination of references does not render obvious independent claims 22, 37, 49, and 56, or any claims that depend therefrom.

With regard to independent claims 22, 37, and 49, Applicants respectfully submit that the Final OA did not show how and why the proposed combination of Meyerson, Morris, and Gans teaches or suggests, at least, "...wherein a path used by the device to wirelessly communicate data is automatically selected from a plurality of communication paths based upon a type of data being communicated, and wherein the type of data is one or both of processed image data and/or speech data...", as recited by claims 22, 37, 49. With regard to independent claim 56, Applicants respectfully submit that the Final OA did not show how and why the proposed combination of Meyerson, Morris, and Gans teaches or suggests, at least, "...wherein a path used by the device to wirelessly communicate data is automatically selected by the at least one processor from a plurality of communication paths based upon a type of data being communicated, and wherein the type of data is one or both of processed image data and/or speech data...", as recited by claim 56. See August Response at pages 12-20.

In rejecting claims 22, 37, 49, and 56, the Final OA repeats, verbatim, the rejection of claims 22, 37, and 49 over the combination of Meyerson, Morris, and Gans set forth in the August OA. See Final OA at page 2-4; August OA at pages

2-4. Applicants previously responded to those arguments. See November Response at pages 12-24. In response to Applicants' arguments of the November Response, the Final OA states that "...Morris and Gans together teaches "a path used by the device to wirelessly communicate data is automatically selected from a plurality of communication paths based upon a type of data being communicated and wherein the type of data is one or both of processed image data and/or speech data". Morris teaches that processed image signals are wirelessly transmitted via a transmission path over a cellular network. Gans teaches that in a cellular network, a wireless transmission path (an optimum transmission path) is selected from a plurality of transmission paths based on received data signals, i.e., received data signals are sampled and processed to determine their signal-to -noise ratio and distortion parameters. In combination, Morris and Gans teach a wireless transmission path is selected from a plurality of transmission paths based on processed image signals.' See Final OA at pages 7-8. Notably, the Office fails to identify any support for these assertions.

Applicants' respectfully submit that, even were the Applicants to agree with the unsupported assertions of the Final OA, which Applicants do not, any teachings by Morris that "...processed image signals are wirelessly transmitted via a transmission path over a cellular network..." and any teachings by Gans that "...received data signals are sampled and processed to determine their signal-to-noise ratio and distortion parameters...," with or without Meyerson, would not result in Applicants' claimed invention. Instead, the arguments of the Final OA clearly show that any selection would be based upon "signal-to-noise ratio and distortion parameters." Applicants respectfully submit that Applicants' feature "...wherein a path used by the device to wirelessly communicate data is automatically selected from a plurality of communication paths **based upon a type of data being communicated**, and wherein the type of data is one or both of processed image data and/or speech data...," as recited in independent claims 22, 37, and 49, is patentably distinct from the purported teachings of Meyerson,

Morris, and Gans. For at least the same reasons, Applicants' feature of claim 56, "...wherein a path used by the device to wirelessly communicate data is automatically selected by the at least one processor from a plurality of communication paths based upon a type of data being communicated...", is also patentably distinct over Meyerson, Morris, and Gans. Applicants respectfully submit that claim 56 further distinguishes over the proposed combination of references, in that the Final OA fails to show where the suggested combination of Meyerson, Morris and Gans teaches that the selection of a path is performed by at least one processor of a handheld device, in accordance with claim 56. Notably, this aspect of independent claim 56 was not even addressed by the Final OA. See Final OA at pages 2-4 and 7-8.

Therefore, Applicant believes that independent claims 22, 37, 49, and 56 are allowable over the proposed combination of Meyerson, Morris, and Gans, for at least the reasons set forth above. Because claims 23-36, 38-48, 50-55, and 57-70 depend, respectively, from allowable independent claims 22, 37, 49, and 56, Applicants respectfully submit that claims 23-36, 38-48, 50-55, and 57-70 are also allowable over the proposed combination of Meyerson, Morris, and Gans, for at least the same reasons.

Accordingly, the Applicants respectfully submit that pending claims 22-70 of the present application are allowable for at least the reasons discussed during prosecution of this application and request that the outstanding rejections be reconsidered and withdrawn.

Respectfully submitted,

Date: April 29, 2009

/Kevin E. Borg/
Kevin E. Borg
Registration No. 51,486

McAndrews, Held & Malloy, Ltd.
500 West Madison, 34th Floor
Chicago, IL 60661
(tel) 312-775-8000
(fax) 312-775-8200